

Department of Energy

§ 1023.304

Covered Proceeding means an underlying proceeding as specified by paragraph (a) of § 1023.303.

Days means calendar days.

§ 1023.301 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called “the Act” in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to covered proceedings. An eligible party may receive an award when it prevails over an agency, unless the agency’s position was substantially justified or special circumstances make an award unjust. These procedures describe the parties eligible for awards and covered Board proceedings. They also explain how to apply for awards and the procedures and standards that the Board will use to make them.

§ 1023.302 When the Act applies.

The Act applies to any covered proceeding pending or commenced before the Board on or after August 5, 1985. It also applies to any such proceeding commenced before the Board on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 1023.310 of this subpart, has been filed with the Board within 30 days after August 5, 1985, and to any such proceeding pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1023.303 Proceedings covered.

(a) The Act applies to appeals from decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) to the Board as provided in section 8 of that Act (41 U.S.C. 607).

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1023.304 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party

to the covered proceeding for which it seeks an award. The term “party” is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than \$7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an “individual” rather than a “sole owner of an unincorporated business” if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant’s direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or